

REMARKS

The rejections of Claims 9, 13 and 20 under 35 U.S.C. § 102(b) as anticipated by JP 63-167786 (Fujisaka Takaaki) “and” US 4,897,272 (Kubota et al), are respectfully traversed. Fujisaka Takaaki and Kubota et al each relate to vinegar, although Fujisaka Takaaki does not disclose or suggest adding a gluconic acid salt to vinegar. Nevertheless, the rejection is now moot in view of the above-discussed amendment. Accordingly, it is respectfully requested that this rejection be withdrawn.

The rejections of Claims 9, 13 and 17-33 under 35 U.S.C. § 103(a) as unpatentable over WO98/23166 (Gudas et al), GB1299135 (Cumberland Packing), EP 0582396 (Catania et al), English language abstract of JP 61-120690 (Yusuke), WO88/06004 (Kingsley), Fujisaka Takaaki and Kubota et al, are respectfully traversed.

As recited in Claim 9, the invention is an orally ingestible product lacking a bitter flavor comprising a material having at least one of an odor and a flavor other than a bitter flavor, and an agent for masking said at least one of an odor and a flavor other than a bitter flavor comprising a nontoxic salt of gluconic acid, wherein the flavor is selected from the group consisting of astringency, pungency, sourness and flavor of powdered milk, and wherein the odor is selected from the group consisting of soybean smell, vegetable smell, smell of garlic, smell of old rice, smell of konjak jelly, smell of vitamin, smell of retort-pouched product, smell of non-fish animal meat and smell of powdered milk, and wherein the material is selected from the group consisting of grated horseradish, Kimchi, grated Japanese radish, pickled Ume, lemon juice, foods containing soybean protein, vegetable juice, tomato juice, grated garlic, old rice, konjak jelly, foods containing vitamin B group, retort-pouched foods, mutton and foods containing powdered skim milk.

As recited in Claim 13, the invention is also a method for masking at least one of an odor and a flavor other than a bitter flavor, of a material lacking a bitter flavor and having

said at least one of an odor and a flavor other than a bitter flavor, in an orally ingestible product, comprising adding a nontoxic salt of gluconic acid to said product, wherein the flavor is selected from the group consisting of astringency, pungency, sourness and flavor of powdered milk, and wherein the odor is selected from the group consisting of soybean smell, vegetable smell, smell of garlic, smell of old rice, smell of konjak jelly, smell of vitamin, smell of retort-pouched product, smell of non-fish animal meat and smell of powdered milk, and wherein the material is selected from the group consisting of grated horseradish, Kimchi, grated Japanese radish, pickled Ume, lemon juice, foods containing soybean protein, vegetable juice, tomato juice, grated garlic, old rice, konjak jelly, foods containing vitamin B group, retort-pouched foods, mutton and foods containing powdered skim milk.

Gudas et al, Cumberland Packing, and Catania et al are each drawn to inhibiting or reducing bitterness, which is excluded from the claims. Yusuke is drawn to deodorizing water, although particular odors are not disclosed. Nevertheless, water is not an ingestible product within the terms of the claims. Fujisaka Takaaki and Kubota et al each relate to vinegar, now deleted from the claims. Kingsley is drawn to a composition for improving the organoleptic properties of seafood. Kingsley's composition comprises a salt, an organic acid, which may be gluconic acid, a calcium salt which may be calcium gluconate, a sweetening agent, and a flavoring/masking agent. Kingsley discloses that the organic acid may act as, inter alia, a flavoring agent and a deodorizing agent (paragraph bridging pages 3 and 4). However, fishy smell is now excluded by the claims.

In the Office Action, the Examiner finds that "[a]ll of the cited references contain flavors other than 'bitter' as obvious components. That is, all of the food products contain other flavors such as 'astringency, pungency, and sourness' as described by Applicant on page 5 of the specification." The Examiner further finds that "[a]ll of the prior art teaches the use of nontoxic salts of gluconic acid as a taste modifier."

In reply, the claims require an orally ingestible product lacking a bitter flavor comprising a material having at least one of an odor and a flavor other than a bitter flavor, **and** a Markush group of flavors **and** a Markush group of materials. None of the applied prior art, alone or in any combination, meets **all** the limitations of the present claims. None of the applied prior art discloses or suggests any of the recited odors, flavors, or materials. The fact that sodium gluconate has been used for inhibiting or reducing bitterness in particular foods, or for deodorizing water, is irrelevant to the presently-claimed invention. If the Examiner repeats any of these rejections, the Examiner should point out, with particularity, which odor or flavor, **and** which material each reference relied on discloses.

For all the above reasons, it is respectfully requested that these rejections be withdrawn.

The rejection of Claims 9 and 13 under 35 U.S.C. § 112, first paragraph, as failing to satisfy the description requirement therein, in the recital of “a material lacking a bitter flavor,” is respectfully traversed. The exclusion of a bitter flavor is supported by the disclosure of bitterness, as well as other flavors, at, for example, page 5, line 14 of the specification. Exclusion of an embodiment described in the specification is prescribed by, for example, *In re Johnson*, 558 F.2d 1008, 194 USPQ 187 (CCPA 1977) (copy of record) (holding that a claim to a genus with a recital of a negative proviso that did not appear in the specification complied with the *description* requirement.)

While the Examiner couches the statement of the rejection in terms of failing to satisfy the description requirement, she states that “Applicant does not clearly teach what is encompassed by ‘a material lacking a bitter flavor’.” The quoted statement appears to be raising an enablement or indefiniteness issue. Does the Examiner, with many years examining in the food art, seriously believe that one skilled in the art would not be able to

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ascertain the metes and bounds of "a material lacking a bitter flavor?" Applicants submit that the description, enablement and definiteness requirements are all satisfied.

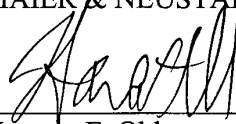
The Examiner's comments, as stated in the last full paragraph of page 2 of the Office Action, are now moot, in view of the above-discussed amendment.

For all the above reasons, it is respectfully requested that this rejection be withdrawn.

All of the presently-pending claims in this application are now believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

Respectfully submitted,

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